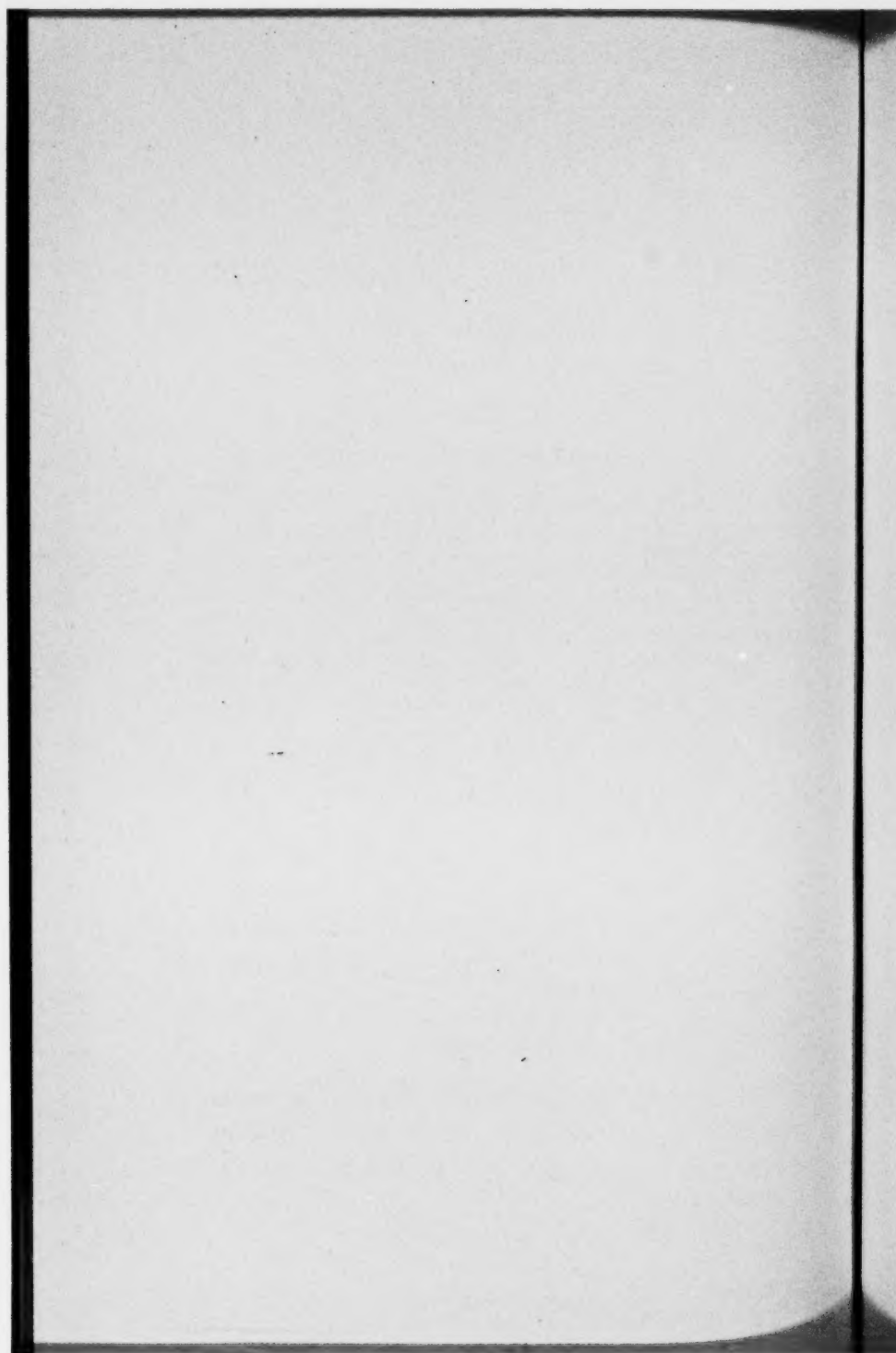


# INDEX

	Page
Opinions below.....	1
Jurisdiction.....	1
Question presented.....	2
Statute and regulations involved.....	2
Statement.....	2
Argument.....	3
Conclusion.....	4
Appendix.....	5
Statute:	
Revenue Act of 1936, c. 690, 49 Stat. 1648, Sec. 23.....	5
Miscellaneous:	
Treasury Regulations 94, Art. 23 (a)-6.....	5

(I)



# In the Supreme Court of the United States

OCTOBER TERM, 1942

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No. 410

LYDIA E. PINKHAM MEDICINE COMPANY,  
PETITIONER

v.

GUY T. HELVERING, COMMISSIONER OF  
INTERNAL REVENUE

---

*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED  
STATES CIRCUIT COURT OF APPEALS FOR THE FIRST  
CIRCUIT*

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## BRIEF FOR THE RESPONDENT IN OPPOSITION

### OPINIONS BELOW

The memorandum opinion of the United States Board of Tax Appeals (R. 32-36) is not officially reported. The opinion of the Circuit Court of Appeals for the First Circuit (R. 66-73) is reported at 128 F. 2d 986.

### JURISDICTION

The judgment of the Circuit Court of Appeals was entered June 26, 1942. (R. 73.) The petition for a writ of certiorari was filed September 21,

1942. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended.

#### QUESTION PRESENTED

Whether the salaries paid to petitioner's officers did not constitute reasonable compensation for personal services actually rendered within the meaning of Section 23 (a) of the Revenue Act of 1936 and were therefore not deductible in full from its gross income.

#### STATUTE AND REGULATIONS INVOLVED

The pertinent provisions of the statute and regulations involved are set forth in the Appendix, *infra*, pp. 5-7.

#### STATEMENT

The facts as found by the Board of Tax Appeals (R. 32-35) may be summarized as follows:

Petitioner is a manufacturing corporation. Its capital stock is equally divided between two inter-related family groups, the Pinkhams and the Goves. The by-laws provide that the president, one vice-president and the secretary shall be from the Pinkham group, and the treasurer, assistant treasurer and one vice-president shall be from the Gove group; that the compensation and salaries shall be so adjusted and apportioned that there shall be an equality between the aggregate salaries received by the officers of the company representing each group of stockholders (R. 33, 34).

Aroline P. Gove was treasurer of the company

from the time of its incorporation until her death in 1939, aged about 80. Her annual compensation since 1926 had been \$21,000. Lydia P. Gove had been assistant treasurer and purchasing agent for a number of years prior to the taxable years, and had received annual compensation of \$8,000 since 1928. The Treasury department of the company was under their direct supervision. This department attended to the financial affairs of the company, involving matters usually handled by such officers of a corporation. Lydia P. Gove, as purchasing agent, supervised purchases made by the company (R. 34, 35).

During the taxable years, 1936 and 1937, Aroline P. Gove was absent and did not attend to the business of the company for approximately one-half of the total time, and Lydia P. Gove was absent and did not attend to the business of the company for almost one-third of the total time. During these years they were paid their usual salaries. The Board found the reasonable compensation for the personal services actually rendered by Aroline P. Gove was \$2,500 for each year, and that the reasonable compensation for the personal services actually rendered by Lydia P. Gove was \$5,000 for each year (R. 35).

#### ARGUMENT

The Board of Tax Appeals fixed the deductible compensation of the only two officers whose services are described in the record (R. 36). The Circuit Court of Appeals affirmed on the ground that

there was ample evidence to support the decision (R. 73), and petitioner does not contend otherwise.

Petitioner's complaint is that the reasonableness of the compensation should have been measured by considering the officers as a group instead of as individuals. This novel argument was rejected by the Circuit Court of Appeals and petitioner cites no authority for it. Even if the argument were theoretically sound, the present record affords no basis for measuring the value of the services of the group as a whole.

Moreover, the facts and issue are quite unusual and do not present a problem of general importance. Petitioner concedes (Pet. 17) that this case is the first of its kind. There is thus no conflict, and petitioner asserts none.

#### CONCLUSION

The decision below is correct; there is no conflict or question of general importance; the petition should be denied.

Respectfully submitted.

CHARLES FAHY,  
*Solicitor General.*

SAMUEL O. CLARK, Jr.,  
*Assistant Attorney General.*

SEWALL KEY,  
J. LOUIS MONARCH,  
MAMIE S. PRICE,

*Special Assistants to the Attorney General.*

OCTOBER 1942.

